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UNDER ARTICLE 9 OF THE CONVENTION

Eleventh periodic reports of States parties due in 1991

Addendum

ROMANIA */

[30 June 1993]

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*/ The present report constitutes the ninth, tenth and eleventh periodic reports of Romania, due on 14 October 1987, 1989 and 1991, respectively, and submitted in one document. For the seventh and eighth periodic reports submitted by the Government of Romania and the summary records of the Committee at which those reports were considered, see the following documents:

Seventh periodic report - CERD/C/132/Add.4 (CERD/C/SR.821);
Eighth periodic report - CERD/C/132/Add.4 (CERD/C/SR.821).

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Introduction

1. This report deals with the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination, adopted by the General Assembly of the United Nations on 21 December 1965 and ratified by Romania on 15 September 1970. The last report of Romania (CERD/C/132/Add.4) was submitted in 1988. Subsequent reports could not be prepared and submitted in time because of the rapid and far-reaching changes in the country's legislation and political and institutional structures that have taken place since 1989.

2. This report therefore constitutes the ninth, tenth and eleventh report of Romania under article 9, paragraph 1, of the Convention. It was drafted in the light of the general guidelines regarding the form and contents of reports to be submitted by State parties under article 9, paragraph 1, of the Convention (CERD/C/70/Rev.2 of 30 September 1991), prepared by the Committee on the Elimination of Racial Discrimination.

3. The information in this report must be supplemented by the data in the core document on Romania (HRI/CORE/1/Add.13 of 21 September 1992), drawn up in accordance with resolution 45/85 of the General Assembly of the United Nations and with the guidelines for the initial part of the reports of Member States.

PART II - GENERAL

4. Romania, which, since December 1988, has been undertaking the legislative, institutional and structural reforms needed to establish a constitutional, democratic State based on respect for human rights, is pursuing a policy designed to prevent and combat any form of racial discrimination and to promote understanding among all its citizens, without distinction as to race, nationalitz, ethnic origin, language or any other factor. This policy is reflected in the new Constitution, in the laws enacted, in the system of State bodies and institutions founded on the separation of powers, in efforts to increase the effectiveness of these bodies and institutions, and above all in the precedence given to international human rights instruments, including the Convention on the Elimination of All forms of Racial Discrimination, in the event of conflict with domestic legislation. Mention must also be made of the growth of non-governmental organisations, which have been set up by Romanian citizens without any disctinction as to race, ethnic or national origin and are playing an increasingly active part in the defence of human rights, including those of members of minorities.

5. This policy has often been proclaimed by the Romanian authorities in recent years, an example being the Romanian Government's declaration on national minorities of 20 November 1991, in which it reaffirmed that its policy and activities in this respect will be governed by the European standards and the rules embodied in the Constitution. The Government, together with the other institutions of the Romanian State, will safeguard respect for the equality of rights of all citizens and for the rights of members of minorities by promoting the preservation of their ethnic, linguistic, cultural and religious identity. The Government will respect the right of members of minorities to have unrestricted access to the country's social, economic and political life both directly and through their freely elected or appointed representatives in State bodies, and also to enjoy the effective material opportunities afforded by Romania's level of economic development. The declaration also states that members of the minorities present in Romanian territory will be protected

against any attempt at forced assimilation and against any manifestation of exclusivism or segregation.

6. Similarly, in its declaration of 25 March 1992, the Romanian Government critized and condemned the chauvinistic or anti-Semitic attitudes and views in some publications produced in Romania, as well as any attempt to propagate extréemist views of a militaristic or fascist character through the media. The Government states that any manifestations of a racist character constitute a patent abuse of the exercise of the constitutional right to freedom of expression and information and that it is the Attorney-General's duty to refer the matter to the judicial authorities with a view to the initiation of the measures prescribed by law in such cases. The Government has reaffirmed its resolve strictly to fulfil the commitments it has assumed through the international conventions and instruments to which Romania is a party and whose purpose is to prevent, combat and punish discrimination based on race, colour, national origin or religion, and also to seek, as a basic objective of its policy, to safeguard respect for the fundamental rights and liberties of the citizens of the country, without distinction as to race, ethnic origin, language or religion.

7. In March 1993, the Government formed after the elections of 27 September 1992 submitted to Parliament a strategy for economic and social reform under which it intends, as one of the main aims of its foreign policy, to "take an active stand within the framework of European and world organisations (the Conference on Security and Co-operation in Europe, the Council of Europe and the United Nations), on problems of respect for human rights and for the rights of members of national minorities, and to reject categorically any approach based on xenophobic, anti-Semitic and racist positions and any attempt at discrimination on any ground whatsoever".

8. The Government undertakes to support ethnic groups in their endeavours to preserve their language and national culture, as well as initiatives and efforts to reduce inter-ethnic tensions, increase trust and respect among members of different ethnic groups and combat any attempt to create discord or engage in chauvinistic, racial or discriminatory manifestations based on criteria of language or race.

9. Under the Constitution adopted in 1991, "Romania is the common and indivisible homeland of all its citizens, regardless of race, nationality, ethnic origin, language, religion, sex, opinion, political allegiance, wealth or social origin" (art. 4 (2)). The Constitution also provides that "the State recognises and guarantees to members of the national minorities the right to preserve, develop and express their ethnic, cultural, linguistic and religious identity" (art. 6 (1)). The Constitution specifies in chapter II (Fundamental rights, freedoms and duties) that "citizens are equal before the law and before public authorities, with no privileges and with no discrimination" (art. 16 (1)) and that "no one is above the law" (art. 16 (2)).

10. The Constitutional Court has jurisdiction to pronounce on the constitutionality of laws before their promulgation on the application of the President of Romania, one of the presidents of the two Chambers, the Government, the Supreme Court or not less than 50 deputies or 25 senators. It also rules on proceedings instituted in the courts concerning the unconstitutionality of laws and orders (government measures taken under special enabling legislation in fields not covered by organic laws and for a limited period) (art. 144 of the Constitution).

11. The Constitution also gives the prefect representing the Government in each of the country's departments the right to contest in the administrative disputes court acts by departmental councils, other local councils or mayors of districts which he regards as illegal (art. 122 (4)). The contested act is automatically suspended. Thus any discriminatory act by a local authority affecting the exercise of rights granted to all citizens by the law can be suspended and then annulled.

12. Any person one of whose rights is infringed by a public authority through an administrative act or failure to meet his request within the statutory time-limit may contest the administrative act or omission in the administrative disputes court and is entitled to obtain recognition of the right claimed, annulment of the act and compensation for the damage suffered (art. 48 (1) of the Constitution). For this purpose, the injured person may apply to the departmental court under the Administrative Disputes Act (Act No.29 of 7 September 1990).

13. Under the 1991 Constitution, Romania is a constitutional, democratic and social State, in which the dignity of the human person, the rights and freedoms of citizens, the unfettered development of the human personality, justice and political pluralism represent supreme values and are guaranteed (art. 1 (3)). It is also provided that "national sovereignty belongs to the Romanian people, who exercise it through their representative bodies and through referendums. No group or person may exercise sovereignty on their own behalf" (art. 2 (1 and 2)). The Constitution requires all Romanian citizens, aliens and stateless persons living in Romania to exercise their constitutional rights and freedoms in good faith, without violating the rights and freedoms of others (art. 54). Similarly, parties or organisations whose objectives or activities militate against political pluralism, against the principles of the State governed by the rule of law, or against the sovereignty, integrity or independence of Romania are declared unconstituional (art. 37 (2)). Disputes concerning the constitutionality of a political party are heard by the Constitutional Court (art. 144). Secret associations are prohibited (art. 37 (4)).

14. With regard to the general legal framework governing human rights, including action to combat and prevent racial discrimination, special importance attaches to the provisions of the Constitution concerning the relationship between international treaties, particularly those dealing with human rights, and domestic law. According to these provisions:

> "1. The Romanian State undertakes to discharge, fully and in good faith, its obligations under the treaties to which it is a party.
>
> 2. The treaties ratified by Parliament, in accordance with the law, are part of domestic law."

In addition:

> "1. Constitutional provisions on the rights and freedoms of citizens shall be interpreted and applied in accordance with the Universal Declaration of Human Rights and with the other covenants and treaties to which Romania is a party.
>
> 2. In the case of non-conformity between the human rights covenants and treaties to which Romania is a party and domestic law, the international legislation shall have priority."

Any individual or lawyer may therefore invoke an international convention, including the International Convention on the Elimination of All Forms of Racial Discrimination, in the Romanian courts; no domestic law may be invoked against

an international instrument to which Romania is a party, nor may it be interpreted or applied at variance with such an instrument.

15. Under the 1991 Constitution, aliens and stateless persons living in Romania enjoy the general protection of the person and property that is guaranteed by the Constitution and other laws. The right of asylum is granted and withdrawn as provided by law, in conformity with the international treaties and conventions to which Romania is a party (art. 18). Under Act No. 25 of 17 December 1969, aliens in Romania possess the fundamental rights of Romanian citizens and the civil rights of such citizens except for political rights, as well as any other right recognised by law or by international agreements to which Romania is a party (art. 1). Aliens are regarded as persons who do not have Romanian citizenship, whether they have a different citizenship or none.

16. The census of 7 January 1992 gave the population of Romania as 22,760,449. According to the information on ethnic origin, given voluntarily during the census, which was organized with United Nations assistance, the population of Romania may be classified as follows:

	Number	Percentage
Total population	22,760,449	100
of which:		
1. Romanian	20,324,829	89.3
2. Hungarians	1,619,368	7.1
3. Gypsies	409,723	1.8
4. Germans	111,301	0.5
5. Ukrainians	66,483	less than 0.3
6. Lipovans	29,774	" 0.1
7. Turks	29,553	" 0.1
8. Serbs	29,080	" 0.1
9. Tatars	24,649	" 0.1
10. Aromanians	21,089	" 0.1
11. Slovaks	20,672	" 0.1
12. Bulgarians	9,935	" 0.05
13. Jews	9,107	" 0.05
14. Russians	8,914	" 0.05
15. Macedo-Romanians	6,999	" 0.05
16. Swabians	6,292	" 0.05
17. Czechs	5,800	" 0.05
18. Croats	4,180	" 0.05
19. Poles	4,247	" 0.05
20. Greeks	3,897	" 0.05
21. Carashoveni	2,775	" 0.05
22. Csangos	2,165	" 0.05
23. Armenians	2,023	" 0.05
24. Saxons	1,843	" 0.05
25. Szeklers	831	" 0.05
26. Ruthenians	350	" 0.05
27. Other	3,480	" 0.05
28. Ethnic origin not declared	1,047	" 0.05

Where the distribution of the principal national minorities in Romanian territory is concerned, it should be noted that they are present in all departments. A map showing population distribution by ethnic origin in the country's 41 departments is attached to annex 1.

17. The Hungarian minority is predominant in two departments (Harghita and Covasna); it accounts for between 20 and 41 per cent of the population in four

departments, between 10 and 20 per cent in three departments, between 2.2 and 10 per cent in 7 departments, between 0.1 and 1 per cent in 16 departments (including the city of Bucharest) and for less than 0.1 per cent in 9 departments.

18. Gypsies are to be found in all departments, accounting for 5.7 per cent of the total population in the department of Mureş, 4.1 per cent in the department of Sibiu, 3.6 per cent in the department of Bihor, 3.5 per cent in the department of Giurgiu, 0.5 per cent in the department of Tulcea, 0.6 per cent in the department of Vaslui, 0.7 per cent in the department of Neamţ and 0.8 per cent in the department of Vâlcea.

19. The German minority is also present in all the country's departments. It is larger in the departments of Timiş (3.8 per cent of the total population), Sibiu (3.7 per cent), Satu Mare (3.6 per cent), Caraş-Severin (3.1 per cent) and Arad (1.9 per cent).

20. Where social conditions are concerned, according to the figures on 31 December 1992, the number of unemployed in the departments with members of national minorities is comparable to that in other departments, as is the average income of the population (Harghita - 15,451, Covasna - 8,451, Braşov - 16,195, Maramureş - 18,953, Timiş - 16,239, Salaj - 13,743, Neamţ - 37,976, Olt - 21,880, Prahova - 23,818, Valcea - 18,139 and Bucharest - 60,775).

21. Similarly, maternal and infant mortality in those departments does not differ from that in other departments. The trend since 1989 has been as follows:

	1989	1990	1991
- Maternal mortality (deaths per 1,000 live-born children)	1.69	0.83	0.66
- Infant mortality (deaths per 1,000 live-born children)	29.3	26.9	22.7

PART II - INFORMATION RELATING TO ARTICLES 2 TO 7 OF THE CONVENTION

Article 2

22. Among the first steps taken by the Romanian authorities after 22 December 1989 to establish democracy and promote human rights was the repeal of a series of laws and provisions constituting restrictions on the exercise of rights and freedoms, including the right of association and assembly, the right to freedom of movement, freedom of expression and freedom of conscience, religion or belief. These steps, which concern the exercise of human rights by all citizens, affect the whole population, but some of them have had special consequences for members of minorities. These include in particular:

a) The possibility of participating in public life through the establishment of their own political parties, organisations and associations. Several political parties and organisations of Hungarians, Germans, Gypsies, Serbs, Czechs, Slovaks, Bulgarians, Ukrainians and other Romanian national minorities have been established under Decree-Law No. 8 of 31 December 1989. These parties and organisations have immediately become involved in political life and have begun to defend the rights of members of the minority concerned.

b) Increased contacts by members of minorities and their parties and organisations with individuals and organisations in other countries;

c) Freedom of expression for parties, organisations and individuals belonging to minorities, reflected in an increased number of newspapers and publications in their mother tongues completely free of censorship;

d) A guarantee of the right of parties and organisations of citizens belonging to minorities to take part in general and local elections, and to put forward their own candidates;

e) A guarantee of parliamentary representation for parties and organisations of citizens belonging to national minorities, those which fail to obtain the required number of votes being entitled to one seat in the Chamber of Deputies. Initially provided for in Decree-Law No. 92 of 18 March 1990, this guarantee has been confirmed in the new Constitution (art. 59 (2)).

f) A guarantee of freedom of movement and of the right to establish a domicile freely in the country, to leave and return to the country, to be repatriated and to reacquire Romanian citizenship on request, even where the applicant maintains his domicile abroad.

23. The new Constitution contains many provisions designed to guarantee to all citizens the exercise of fundamental rights and freedoms on terms of equality and with no discrimination. The constitutional provisions establish:

a) The equality of citizens "with no privileges and with no discrimination" not only before the law but also before public authorities (art. 16 (1));

b) The duty of everyone to comply with the law and to be accountable for its infringement (art. 16 (2));

c) Free and unrestricted access to justice for every individual for the protection of his legitimate rights, freedoms and interests; no law may curtail the exercise of this right (art. 16 (1 and 2));

d) A guarantee of the inviolability of freedom of throught, opinion and religion, freedom to express ideas, opinions and beliefs and the freedom to create works of all kinds (art. 29 (1 and 2) and 30 (1));

e) The prohibition of censorship of any kind, a guarantee of freedom of the press through freedom to issue publicaticns, and prohibition of the suppression of publications (art. 30 (2,3 and 4));

f) The independence of public radio and television services, which must guarantee exercise of the right to broadcast to large social and political groups (art. 31 (5));

g) A guarantee of the right of persons belonging to national minorities to "learn their mother tongue" and to "receive instruction in their own language" (art. 32 (3));

h) The duty of the judicial authorities to bring to the knowledge of a person who is detained or arrested, promptly and "in a language which he understands", the reasons for his detention or arrest (art. 23 (5));

i) The right of citizens belonging to national minorities and of persons who do not understand or speak Romanian "to take cognizance of all the case records and documents, to speak in court and to file submissions through an interpreter (art. 127 (2)).

24. The laws must conform to the Constitution. The question of their unconstitutionality may be raised both before their promulgation and in the courts; the same applies to orders made by the Government. The Constitution stipulates that its provisions may not be revised if this has the effect of suppressing the fundamental rights and freedoms of citizens or the guarantees of those rights and freedoms (art. 148 (2)). It is further provided that laws and any other prescriptive acts previously enacted shall remain in force in so far as they do not conflict with the Constitution (art. 150 (1)). Any prescriptive act deemed to contravene a provision of the Constitution may therefore be the subject of unconstitutionality proceedings and the case is referred to the Constitutional Court.

25. The Constitution explicitly prohibits any encouragement of national, racial, class or religious hatred and any incitement to discrimination, territorial separatism or public violence (art. 30 (7)). The Constitution provides that freedom of conscience is guaranteed and must be reflected in a spirit of tolerance and mutual respect; freedom of religion may not be restricted in any way (art. 29(1 and 2)). The Constitution further states that "all forms, means, acts or actions of religious discord" are prohibited (art. 29 (4)). Although concerned with religious freedom, this provision is important as a means of ensuring that manifestations of intolerance between religious denominations do not lead to situations of hostility between ethnic groups or persons of different nationality. There is also a stipulation that rights and freedoms must be exercised in "good faith, without violating the rights and freedoms of others" (art. 54).

26. Under the Romanian Penal Code, nationalist or chauvinistic propaganda and incitement to racial or national hatred constitute an offence punishable by a term of imprisonment of 6 months to 5 years (art. 317). Similarly, propaganda of a fascist character disseminated in public by any means whatsoever is punishable by a term of imprisonment of 5 to 15 years and by the forfeiture of certain rights (art. 166).

27. The authorities encourage and promote organisations and initiatives designed to enhance trust and understanding between the majhority and the minorities in the different parts of the country, as well as the amicable settlement of all issues. By Government Decision No. 677 of 1 October 1991, a Centre for European Studies of Ethnic Problems was set up within the Romanian Academy. The Centre undertakes research on various matters relating to ethnic, linguistic or religious groups, their evolution and interethnic communication. It also organises programmes for students aimed at combating anti-Semitism and faciliting the integration of immigrants in Romanian society. It runs symposia and round-table discussions, with national and international participation, and is involved in all discussions of the status of national minorities in Romania. A series of such symposia were, for example, organized in 1991-1993 on the theme of "Ethnicity in the contemporary world".

28. Similar work is being done by the Romanian Human Rights Institute, set up by Act No. 9 of 29 January 1991 and operating under the aegis of the Romanian Parliament. The Institute organises discussions with the participation of representatives of the national minorities' parties and associations, supplies information and documentation to organisations, associations and individuals, without distinction, on all international instruments and questions affecting human rights, and undertakes the training of categories of persons with special responsibilities for the protection and promotion of human rights.

29. With the same end in view, the Government of Romania recently adopted Decision No. 137 of 6 April 1993 concerning the organisation and functioning of the Advisory Council for National Minorities. The Council's purpose is to maintain relations with the legally constituted organisations of members of national minorities and it is competent to deal with normative, administrative and financial matters affecting the exercise of the rights of members of those minorities with respect to the preservation, development and expression of their ethnic, cultural, linguistic and religious identity. Other programmes and activities designed to develop interethnic understanding and co-operation have been organized by the cultural associations of the Hungarian, German, Albanian, Armenian, Jewish, Czech and Slovak minorities, with the support of the Government and the political parties.

30. As already stated, the Romanian Government, in its declaration of 25 March 1992, has taken a stand against xenophobic, anti-Semitic, chauvinistic and extremist manifestations conducive to ethnic divisions. Noting that such manifestations involve a tiny proportion of the country's citizens and reflect individual and isolated positions, the Government has expressed its belief that Romanian society as a whole will reject these positions and will not permit acts and attitudes contrary to the genuine values of democracy and a constitutional State.

31. Under the Constitution, the Romanian State "recognises and guarantees to members of the national minorities the right to preserve, develop and express their ethnic, cultural, linguistic and religious identity". It also provides that "the measures of protection adopted by the State to preserve, develop and

express the identity of members of the national minorities must be in conformity with the principles of equality and non-discrimination vis-à-vis other Romanian citizens" (art. 6). In applying these constitutional provisions, account is taken of the specific situation of each minority, the requests made by their organisations and the available resources.

32. In the case of the Hungarian minority, which is the largest, the State supports the development of its cultural, linguistic and ethnic identity through a system of schools at all levels, cultural institutions and information media in the mother tongue (see paras. 98-103 below). In certain parts of the country, the Hungarian minority has proportionately more school units and cultural institutions than the Romanian majority.

33. The problem with the German minority, which has decreased considerably during the last ten years, is to to stabilise it and maintain its cultural and linguistic identity. Schemes for this purpose have been organized in co-operation with Germany, involving the opening of vocational training centres for persons of German origin and for other Romanian citizens in several Romanian cities. Practical solutions are being sought with a view to enabling the largest possible number of children in this minority to study in their mother tongue.

34. The State is also helping to preserve the ethnic identity of the less numerous minorities (Poles, Ukrainians, Turks, Tatars, Czechs and Slovaks) by opening new schools and encouraging associations of these minorities. Different problems affect the Gypsy ethnic minority, including the level of education, vocational training, knowledge and the exercise of human rights, and more particularly, economic and social standards. Some action has been taken through the training of teachers from among Gypsy students, and through social integration programmes, organized jointly with French associations.

35. The years 1990-1992 have seen a gradual increase in the number of school units, cultural institutions and information media in the minority mother tongues. Such social, educational and cultural measures, of course, call for large financial resources, and these are limited, particularly in the present transitional period. Economic recovery will, no doubt, lead to increased efforts in these fields to the benefit of both the majority and the minorities.

Article 3

36. Romania condemns racial segregation and apartheid and prohibits any practices of this type in its territory. In 1974, it ratified the International Convention on the Suppression and Punishment of the Crime of Apartheid, which was adopted by the General Assembly of the United Nations on 30 November 1973. With the advent of changes in South Africa aimed at eliminating the policy of apartheid, Romania established consular and later diplomatic relations with the Republic of South Africa. Diplomatic missions between the two countries were opened in 1992.

Article 4

37. The Romanian Penal Code provides that:

> "Nationalist or chauvinistic propaganda and incitement to hatred based on race or nationality constitute offences which are punishable by a term of imprisonment of 6 months to 5 years (art. 317).

Propaganda of a fascist character conducted in public by any means whatsoever is punishable by a term of imprisonment of 5 to 15 years and the forfeiture of certain rights (art. 166)."

Having regard to the gravity of the facts, the Penal Code also punishes an attempt to commit the offence of fascist propaganda, defining an attempt as "the producing or procuring of the means or instruments and the taking of steps for the purpose of committing the offence" (art. 173 (1 and 2)). According to the general rule applicable to an attempt, the penalty is fixed at between the minimum and half the maximum prescribed for the completed offence (art. 21). The Penal Code also makes it an offence to conceal or abet the offence of racist propaganda, prescribing a penalty of 3 to 10 years' imprisonment (art. 173 (3)).

38. As already stated, the Constitution provides that incitement to national, class or religious hatred and incitement to discrimination, territorial separatism or public violence are prohibited by law (art. 30 (7)). These provisions have not yet been specificially incorporated in the Penal Code; they will be taken into account in the draft Penal Code at present in preparation. Pending the adoption of the new Penal Code, the provisions of the current Penal Code are applicable, under which incitement to public violence and the vindication of offences are punishable by a term of imprisonment of 3 months to 3 years (art. 324 (1, 2 and 4)).

39. As stated above, under the 1991 Constitution, parties or organisations whose objectives or activities militate against political pluralism or against the State governed by the rule of law are unconstitutional. Secret associations are prohibited (art. 37). Similarly, under Decree-Law No. 8 of 31 December 1989 concerning the registration and functioning of political parties and associations, the "formation of political parties in Romania is free except for fascist parties or parties propagating ideas contrary to the State and legal order. No restriction based on considerations of race, nationality, religion, education, sex or political convictions may prevent the formation and functioning of political parties".

40. There is no specific prohibition of organisations which incite to and encourage racial discrimination. The prohibition of racial discrimination is, however, regarded as an inherent feature of a State governed by the rule of law, and such organisations are therefore, unconstitutional. Individuals taking part in organisations or activities of that kind are punished under the Penal Code for participating in nationalist or chauvinistic propaganda activities, incitement to hatred or national feeing (art. 137) or propaganda of a fascist character (art. 166). An attempt, i.e. the preparation of those offences, which also involves participation in such an organisation, is similarly punishable. Consideration will be given to the treatment of this problem in the new Penal Code. With regard to propaganda activities inciting racial discrimination, the Constitution provides in its article on freedom of expression (art. 30) that, inter-alia, incitement to national and racial hatred and to discrimination are prohibited by law. Consideration is being given to the introduction of such a provision in the new Penal Code.

41. National and local public authorities and institutions are responsible in different ways for any act of incitement to, or encouragement of, racial discrimination. In the case of local authorities and institutions, the prefect of any department may contest in the administrative disputes court any act by the departmental council, a local council or the mayor of any locality within the department which he deems to be illegal (art. 122 (4) of the Constitution).

The contested act is automatically suspended. For example, measures taken by the mayor of Cluj-Napoca relating to public meetings not reported to the municipal offices, and to the right of expression involving, for instance, the posting of bilingual notices were considered to be illegal by the prefect of the department and suspended.

42. Where national authorities or institutions are concerned, representatives of parties and organisations of citizens belonging to national minorities may, in their capacity of senator or deputy (whether elected or appointed), bring to the notice of Parliament any act or practice involving racial discrimination or the encouragement of such discrimination. They may also put questions or make interpellations, to which the Government and each of its members is obliged to reply. They may, in addition, introduce a motion whereby the Chamber of Deputies or the Senate can express its position on the matter which was the subject of the interpellation (art. 111 of the Constitution).

43. With respect fo the acts of any State body, the Constitution gives citizens and organisations the right to address petitions to the public authorities, which are required to reply within the statutory time-limit (art. 47). This right could therefore also be used in a case where a public authority has, through its activities, favoured privileges or discrimination or has instigated or encouraged them.

44. Similarly, the Constitution (art. 48) and the Administrative Disputes Act (Act No. 29 of 7 November 1990) provide that a person one of whose rights has been injured by a public authority - through an administrative act or through failure to meet his request concerning legally recognised right - may apply to the administrative disputes court for recognition of the right claimed, cancellation of the act and compensation for the damage sustained. This is a general provision, which may be invoked against any act of racial discrimination.

45. Another institution, that of the Ombudsman, established by the 1991 Constitution, is to be exclusively concerned with the defence of human rights and freedoms in relation to all public authorities, his powers being exercised ex officio or at the request of injured persons. All public authorities are required to provide him with the necessary support in the exercise of his powers (art.56). In the reports he will have to submit to Parliament, he may make recommendations on legislation or other measures to protect human rights and freedoms and, of course, to counter discrimination.

Article 5

THE RIGHT TO EQUAL TREATMENT BEFORE TRIBUNALS

46. This right is guaranteed by the Constitution, which stipulates:

a) The equality of citizens "before the law and before public authorities, with no privileges and with no discrimination" (art. 16);

b) Free and unrestricted access to justice for everyone; no law may curtail the exercise of this right (art. 21);

c) The independence of judges, who are subject only to the law (art. 123);

d) Hearings in open court, except in the cases prescribed by law (art. 126);

e) Legality and impartiality as principles of the judicial activities undertaken by prosecutors in the prosecution services (art. 130 and 131);

f) The right of every person to defend himself and to be assisted by a counsel of his own choosing or appointed by the court (art. 24);

g) The duty of the judicial authorities to bring to the knowledge of aperson who is detained or arrested, promptly and in a language which he understands, the reasons for his detention or arrest (art. 23 (5));

h) The right of citizens belonging to national minorities and of persons who do not understand or speak Romanian to take cognizance of all the case records and documents, to speak in court and to file submissions through an interpreter; in criminal cases, this right is ensured without charge (art. 127);

i) The presumption of innocence of any person until the judicial sentence becomes final (art. 23 (8)).

These provisions are elaborated in the codes of criminal and civil procedure and in the Judicial Organisation Act (Act No. 92 of 4 August 1992).

SECURITY OF PERSON

47. Under the Constitution, "individual freedom and personal security are inviolable. The searching, detention or arrest of a person is allowed only in cases specified by law and according to the procedure specified by law". Further, "no penalty may be fixed or enforced except under the terms and in pursuance of the law" (art. 23 (1, 2 and 9)). The right of a person to physical and mental well-being is guaranteed. It is provided that "no one may be subjected to torture or to any inhuman or degrading punishment or treatment" (art. 22 (1 and 2)). The duty to respect the human dignity of any person who is the subject of criminal proceedings or trial has been incorporated in the Code of Criminal Procedure (art. 51) by Act No. 32 of 16 November 1990. It is also provided that the "act of subjecting a person to torture or to cruel, inhuman or degrading treatment is punishable by law".

48. The Convention on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which was adopted in New York on 10 December 1984, has been ratified by Romania by Act No. 1 of 9 October 1990. Subsequently, by Act No. 20 of the same date, the Penal Code was amplified by article 267^{1}, which makes torture a punishable offence defined as "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by, or at the instigation of, or with the consent or acquiescence of, a public official or other person acting in an official capacity". Depending on the consequences, the prescribed penalty is a term of imprisonment of 2 to 7 years or 3 to 10 years, and where the torture has led to the victim's death, detention for life or a term of imprisonment of 10 to 20 years.

49. The Penal Code also treats as crimes and prescribes penalties for the following acts by a public official which violate security of the person:

a) The illegal deprivation of liberty, for which the penalty is a term of imprisonment of 6 months to 3 years (art. 189);

b) The ill-treatment of a person under detention or serving a custodial or educational sentence, for which the penalty is a term of imprisonment of 6 months to 3 years (art. 267);

c) "The use of ... violence against a person who is the subject of inquiries, a criminal investigation or trial in order to obtain statements", an offence punishable by a term of imprisonment of 1 to 5 years (art. 266 (2)).

50. The State and the law similarly protect a person against any violence or ill-treatment committed by an individual or a group of individuals. The Penal Code punishes:

a) Acts of violence causing physical suffering (art. 180), bodily harm (art. 181), grievous bodily harm (art. 182);

b) Assault or injury resulting in death (art. 183);

c) Homicide, aggravated homicide and homicide with cruelty (arts. 174-176);

d) Rape committed by an individual or a group (art. 197).

51. The right to equal treatment before tribunals and the law is guaranteed to both the injured person and the accused, each having the possibility of demanding respect for legal guarantees and procedural provisions throughout the trial. The following are relevant in this connection:

a) The right of an injured person to press for punishment of the guilty party and for receipt of the appropriate compensation by utilizing the legal means of contesting a court decision which he deems ill-founded and illegal (Code of Criminal Procedure, art. 362 (c and d));

b) The right of every person accused or charged not to be required to prove his innocence (ibid, art. 66);

c) The right of an accused person to utilize the legal means of contesting a conviction and to call for acquittal or a reduction of the penalty, as appropriate (ibid, art. 362 b).

52. Incidents of group violence between Romanians and Hungarians took place in March 1990 at Tirgu-Mures in the tense and uncertain atmosphere following the changes of December 1989. They originated in measures of school segregation and in abuses, which led to discontent, particularly among Romanian parents whose children were excluded from schools. A contributory factor was the presence of a number of visiting Hungarian citizens, celebrating a historical festival with Hungarian flags, anthems and slogans, which may have acted as a trigger. The clashes caused deaths and injuries; the judicial authorities have prosecuted and punished 40 individuals, 8 of whom were of Hungarian nationality and 2 of Romanian nationality. Acts of physical violence and bodily injury were involved for which firmevidence was available. In other cases, enquiries are still

incomplete, the authors not having been identified. Sixteen persons of Gypsy nationality were sentenced to imprisonment and 14 to fines, mainly for acts of looting and theft. These figures are also attributable to the fact that the number of casualties was ten times greater among the Romanians and included 6 deaths. Since March 1990 there has been no violence of this type.

53. In some rural areas there have also been clashes between groups of Gypsies, or between Gypsies amd Romanians or Hungarians. A government commission has investigated these cases and has come to the conclusion that they did not have the character of an ethnic or inter-confessional conflict, but were social conflicts or conflicts caused by individual and repeated acts of violence. Discussions have beenb instituted and negotiations have taken place between the national, departmental and local authorities and the Gypsy communities, which have led to the reintegration of residents who had left the villages and to joint efforts to rebuild houses; mixed commissions have been set up at the local level to take charge of inter-community relations and to prevent a repetition of the clashes. Criminal proceedings are in progress against persons who committed acts of violence against Gypsy communities.

POLITICAL RIGHTS

54. Under Decree-Law No. 92 of 14 March 1990, the first free elections after 45 years of Communist rule took place in Romania on 20 May 1990. All Romanian citizens of 18 years of age, without distinction as to nationality, race or ethnic origin, were able to take part. Parties and organisations of persons belonging to national minorities put forward their own list of candidates. Fourty-one senators and deputies were elected on the proposal of the Hungarian Democratic Union of Romania, while the organisations of other national minorities, which did not obtain the number of votes required for a seat, were each given the right to appoint one deputy to the Chamber of Deputies. The Parliament elected on 20 May 1990 essentially functioned as a constituent assembly, adopting the Constitution of Romania on 26 November 1991.

55. Under the Constitution, citizens who have reached the age of 18 by the date of the election have the right to vote. The exceptions are persons certified as mentally retarded or insane and persons sentenced by a final court decision to the loss of electoral rights (art. 54).

56. Citizens who have the right to vote, who have only Romanian citizenship, who have their residence in the country and who do not come into categories such as judges of the Constitutional Court, the Ombudsman, magistrates, serving members of the army and members of the police force are eligible for election (art. 35, 16 and 37 of the Constitution). Candidates must have reached the age of 23 by the date of the vote for election to the Chamber of Deputies or to local organs or the age of 35 for election to the Senate or as President (art. 35). The Constitution reproduces the provisions of the above-mentioned Act of 1990, by guaranteeing to organisations of citizens belonging to national minorities which fail to obtain the required number of votes for representation in Parliament the right to one seat each in the Chamber of Deputies (one organisation only for each minority).

57. Act No. 69 of 1992 concerning the election of Parliament and of the President was adopted on the basis of the Constitution, as was Act No. 70 of 1991 concerning local elections.

a) The parliamentary elections of 27 September 1992 were marked not only by the involvement of the organisations of national minorities, but also by the participation of the Hungarian Democratic Union of Romania in the Democratic Convention of Romania, side by side with political parties largely composed of Romanians and on the basis of joint lists in some departments. As a result of these elections, 39 deputies and senators were elected from among the citizens proposed by the organisation of the Hungarian minority. Fourteen minorities which did not obtain the required number of votes each appointed a deputy to the Chamber of Deputies. The Hungarian minority has a parliamentary group in the Chamber and another in the Senate, while the other minorities have a parliamentary group in the Chamber of Deputies.

b) The local elections, which took place on 9 February 1992, resulted in the election of a large number of mayors and councillors from among the candidates proposed by the organisations of members of minorities. The results of the local elections for departments with residents belonging to national minorities are given in annex 2.

58. The right of access on terms of equality to public office and the management of public affairs, including participation in the Government, is guaranteed without distinction as to race, antionality or ethnic origin. The only restrictions imposed by the Constitution on access to public offices and positions, both civilian and military, are that the persons concerned must have only Romanian citizenship and have their residence in Romania (art. 16 (3)). Citizens belonging to minorities are elected as mayors and councillors; they are appointed as officials in the prefectures of departments and to other public offices in the departments where the minorities in question live. Similarly, they are appointed to posts in the central and local administration, the army and the judiciary, and to other public positions.

59. Problems have arisen over the appointment of prefects in the departments where the bulk of the population is of Hungarian origin. The organisations of this minority have claimed that the prefects should have been appointed from among its members. The Government's position is that the prefects are appointed by reference to professional and political considerations, not on an ethnic basis. The prefect is the Government's representative in a department, as provided in the Constitution. Since the Government is formed on the basis of the support of certain political parties and since the organisation representing the Hungarian minority belongs to the opposition, together with some Romanian parties, it was not thought desirable to appoint prefects from among the members of this minority.

60. The Government has, however, already appointed sub-prefects and other public officials from among members of minorities. In the departments of Covasna and Harghita, the majority of prefecture officials, local council secretaries and other public officials are of Hungarian origin; in other departments, members of minorities are appointed to public offices in proportion to their numbers in the population. In Covasna, there are 24 council secretaries of Hungarian origin and 7 of Romanian origin; in Harghita there are 51 of Hungarian origin and 8 of Romanian origin.

61. There are, however, departments and localities where the situation is not satisfactory, particularly with regard to small minorities. The problem is still receiving the Government's attention and a more satisfactory solution may be found with an increase in decentralisation and local autonomy.

CIVIL RIGHTS

The right to freedom of movement within the country

62. Decree-Law No. 1 of 26 December 1989 abrogated all the provisions and restrictive practices which limited the taking up of residence in Bucharest and other large cities and which required some categories of professional people (farmers, teachers, doctors, etc.) to establish their residence in the locality in which they exercised their profession. The 1991 Constitution guarantees to all citizens the right to freedom of movement and to establish their domicile or residence in any locality in the country (art. 25).

The right to leave the country and to return to it

63. Decree-Law No. 10 of 8 January 1990 governing passports and foreign travel introduced a system of unrestricted foreign travel and the right to a passport for all Romanian citizens, with no distinction as to race, nationality, sex, religion or ethnic origin. Any provisions to the contrary have been rescinded. Decree-Law No. 45 of 1 February 1990 also rescinded the restrictive provisions of Decree No. 678 of 1969 concerning measures for protection of the State frontier and Decree No. 400 of 1982 concerning control of traffic across that frontier. Decree No. 9 of 31 December 1989 further rescinded article 253 of the Penal Code, which made it a punishable offence for a Romanian citizen entrusted with an assignment abroad on behalf of the State or a non-governmental organisation to refuse to return to the country on completion of the assignment. The 1991 Constitution guarantees the right to free movement abroad and the right of every citizen to emigrate and to return to the country (art. 25 (2)).

The right to nationality

64. The new Romanian Citizenship Act guarantees to all citizens the right to benefit, on terms of equality, from the protection of the Romanian State (Act No. 21 of 1 March 1991, art. 1). It lays down how Romanian citizenship is acquired (by birth, adoption, repatriation or application), and how it is lost (by withdrawal, renunciation or adoption). The conditions laid down by law are the same in each case, without distinction as to race, nationality or ethnic origin.

65. Substantial changes have been made in the legislation since December 1989. Decree-Law No. 7 of 31 December 1989 recognised the right to repatriation of Romanian citizens living abroad and also of former citizens wishing to reacquire Romanian citizenship. It is also provided that all repatriated persons enjoy, without any discrimination, the political, economic and social rights guaranteed to citizens by law.

66. Similarly, under Decree-Law No. 137 of 21 May 1990, individuals who do not return to the country and maintain their domicile abroad are given the right to reacquire Romanian citizenship, which was hitherto inconceivable. It is specifically provided that former citizens "who have been deprived of Romanian citizenship against their will or for reasons beyond their control, and their descendants", may reacquire Romanian citizenship "even if they have another citizenship and do not take up residence in Romania". The Constituion of 1991 confirms the provisions of Act No. 21 of 1991, which is the organic law to which article 5 of the Constitution refers, and adds that "Romanian citizenship may not be withdrawn from anyone who acquired it by birth" (art. 5 (2)).

The right to marriage

67. The right to marry and choose a spouse is based on the right which the Constitution accords to every individual "to freedom of action, as long as he does not violate the rights or freedom of others, public order or public morals (art. 26 (2)). The public authorities have the duty to respect and defend the home, family life and privacy (art. 26 (1)). It is also provided that "the family is based upon a marriage freely consented to by the spouses, upon their equality and upon the right and duty of the parents to ensure the development, education and upbringing of the children" (art. 44 (1)). Marriages are contracted, dissolved or annulled according to the provisions of the Family Code. The provision of the Civil Code (art. 134) requiring the prior authorisation of the President of the Republic for a marriage between a Romanian citizen and an alien was abrogated by Decree-Law No. 9 of 31 December 1989.

The right to own property

68. Until 1990, the right to own private property was limited by law in the case of land (200 m² except in hilly and mountainous areas where co-operative farming had not been introduced; dwellings (one residence per family and possibly also a holiday home); buildings for productive activities (small craft workshops only); and in the case of other property (equipment, installations and even means of transport).

69. The right to own, alone or in association with others, the necessary goods for the most diverse productive activities was recognised by Decree-Law No. 54 of 5 February 1990 concerning the organisation of economic activities on the basis of free enterprise in individual workshops, famila companies, profit-making associations and small enterprises. Act No. 31 of 17 November 1990 concerning commercial companies marked an important advance in providing the legal framework for the operation of the private sector in the Romanian economy. This Act fixes no maximum for the registered capital invested by partners, or for possible increases in that capital.

70. The Land Act (Act No. 18 of 19 February 1990) established the legal framework for the reintroduction of the right of ownership to land which had been incorporated in agricultural enterprises and co-operatives as a result of nationalisation, expropriation or forced association. The same Act grants a right of ownership to members of co-operatives who did not contribute land and to other persons who have worked in a co-operative for the past three years. In all these cases, the Act provides for the right to own land "within the limits of half a hectare per juridical person and a maximum of 10 hectares per family of arable land or its equivalent" (art. 8).

71. The Land Act also includes special provisions in the nature of reparations (art. 18). Under these provisions, Romanian citizens belonging to the German minority and other persons who were displaced or deported as a result of prescriptive legislation enacted after 1944 and whose land in the localities from which they were removed was expropriated "will be granted, on application and in priorty, title to an area of land equivalent to the area they previously owned, not exceeding 10 hectares per family of arable land or its equivalent".

72. The Act further established rules for the legal transfer of land, fixing a limit of 100 hectares of arable land or its equivalent per family in all cases of acquisition by legal transactions inter vivos (art. 46).

73. Persons who do not have Romanian citizenship or a domicile in Romania are excluded. Where, however, a Romanian citizen domiciled abroad or a former Romanian citizen who reacquires Romanian citizenship returns to the country and establishes his domicile there, he is entitled to reacquire the title to land under the Land Act (art. 42) and to acquire the title to land by all the methods laid down by the civil law (art. 46).

74. The right to private property is guaranteed by the Constitution, which provides that no one "may be expropriated except for a reason of public interest established by law and subject to equitable and prior compensation". It is also provided that "property lawfully acquired may not be confiscated. The lawful character of the acquisition is presumed" (art. 41 (1, 3 and 7) of the Constitution). The Constituion stipulates that "private property enjoys the equal protection of the law, irrespective of the owner" (art. 41 (2)). This provision strengthens the principle of equality before the law and the public authorities, in that it provides general protection for the property of all persons who are domiciled in Romania, without distinction as to race, nationality or ethnic origin, with no privileges and with no distinction (art. 16 and 18 of the Constitution.

The right to inherit

75. The right to inherit, which is guaranteed by the Constitution (art. 42), is regulated by the Civil Code, which lays down the procedures for inheritance according to the law and by testament, the rules of succession, the procedure for determining the degree of consanguinity and the conditions for acceptance and renunciation of succession (art. 644, 650-654, 659-663, 685-703 of the Civil Code). The only persons barred from succession are those deemed "unworthy to inhert", namely: a convicted person who has killed or attempted to kill the deceased and an heir of full age who, having knowledge of the murder of the deceased, fails to report it to the judicial authorities (Civil Code, art. 655).

The right to freedom of thought, conscience and religion

76. Freedom of conscience and of religious worship was recognised by the law, even under the Communist regime. The Greek Catholic Church was, however, banned, even though a large number of Romanians belonged to it and that Church had played an important role in the establishment of the unitary Romanian State on 1 December 1918. Decree-Law No. 9 of 31 December 1989 restored the legal situation of the Greek Catholic Church, while Decree-Law No. 126 of 24 April 1990 recognised the right of the Romanian Church United with Rome (Greek Catholic) to the property it had previous owned. By Decision No. 466 of 19 August 1992, the Romanian Government returned to the Romanian Church United with Rome (Greek Catholic) 80 buildings it had owned before 1948, restoring its title to these buildings. In the case of land on which buildings have since been erected, provision has been made for the grant of an equivalent area of land. Following the restoration of the legal status of the Greek Catholic church, some problems have developed between that Church and the Orthodox Church with regard to ownership of places of worship. In some localities Greek Catholic believers have occupied places of worship by force and clashes have taken place between Orthodox and Greek Catholic believers. The authorities have had to intervene to prevent violence and ensure freedom of worship. The State has also made efforts to facilitate an amicable solution to the problem of the sharing of places of worship between the two Churches. As the wishes of believers regarding membership of one or other Church become clear and as

relations between the two Churches generally improve, all these problems should gradually be resolved.

77. The Romanian Constitution guarantees freedom of conscience on terms of equality, without distinction as to race, nationality or ethnic origin. "Freedom of thought and opinion, and freedom of religion may not be restricted in any way. No one may be forced to adopt an opinion or espouse a religious belief contrary to his convictions". Simarilarly, "parents or guardians have the right to ensure, in accordance with their own convictions, the education of minor children for whom they are responsible" (art. 29 (1 and 6)). Freedom of conscience "shall be expressed in a spirit of tolerance and mutual respect". It is also provided that "in the relations between denominations, all forms, means, acts or actions of religious discord are prohibited". The denominations are "autonomous" in relation to the State (art. 29 (2, 4 and 5)).

78. While before December 1989 religious ceremonies took place solely in places of worship, the Church and religious ceremonies have now been reintroduced into public life, inter alia through the media. The State supports the Churches and facilitates religious work in the army, hospitals, penal establishments, asylums and orphanages. Provisions to that effect are included in the Constitution (art. 29 (5)).

79. The State also "ensures freedom of religious education, according to the specific requirements of each denomination" (art. 32 (7)). Under this constitutional provision, government decisions have recently involved the setting up of the Oradea Bible Institute, the university-level Roman Catholic Theological Institute in Bucharest, the faculty of theology in the First of December University of Alba Iulia, and the Pentecostal Theological Institute and the Seventh Day Adventist Theological Institute, both at Bucharest.

80. The position of the religious denominations, believers, places of worship and training schools for the Churches is shown in annex 3.

The right to freedom of opinion and expression

81. The right to freedom of opinion and expression was virtually never accepted by the Communist regime. This explains why it was not until after December 1989 that the Romanian people learned the true scale of the crimes committed against thousands of persons who, because of their political opinions, were imprisoned, displaced, subjected to forced labour, detained in psychiatric hospitals, tortured or killed. Decree-Laws No. 1 of 27 December 1989 and No. 12 of 10 January 1990 repealed the provisions of the Penal Code (art. 164, 166 and 237) which classified as political offences "propaganda against the socialist regime", political "sabotage" or "defamation of a State organisation".

82. However, in order to compensate persons persecuted for political reasons by the dictatorship established after 6 March 1945, Decree-Law No. 118 of 9 April 1990 granted such persons a monthly indemnity for each year of detention, internment, displacement or forced residence, as well as the right to have each such year counted as a year and a half of service for the purposes of calculating their own, or their dependants' pension. By Act No. 38 of 13 December 1990, these provisions were extended to persons deported after 23 August 1944, particularly Romanian citizens of German origin who were deported to the USSR and who, after the war, were sent to do forced labour on the reconstruction of certain towns in the former German Democratic Republic.

83. The right to freedom of opinion and expression was one of the first rights claimed and regained by the Romanian people in December 1989. Newspapers in Romanian, Hungarian, German and other languages could appear for the first time without censorship. In the space of a few months, the number of publications increased from 100 to over 1,500. The 1991 Constitution establishes the inviolability of freedom of expression of thoughts, opinions or beliefs and freedom of creation of any type, whether orally, in writing, in images, in sound or by other forms of public communication and prohibited censorship of any kind (art. 30 (1, 2 and 3)). It also provides that the public radio and television services shall be independent and shall guarantee to large social and political groups the exercise of the right to broadcast (art. 31 (5)). The situation with regard to publications in the mother tongues of members of ethnic minorities and radio and television broadcasts in these languages is set out in annex 4.

84. Freedom of opinion and expression is guaranteed to all citizens, without distinction as to nationality and ethnic origin. Limits are obviously imposed by the country's transitional situation and economic difficulties. These limits affect all the country's citizens.

The right to freedom of peaceful assembly and association

85. The legal framework for the institution of a multi-party system in Romania was created by Decree-Law No. 8 of 31 December 1989, which provided the basis for the establishment of the more than 200 parties existing today. According to article 1 of this Decree-Law, "the formation of political parties is free in Romania, except for fascist parties or those propagating ideas contrary to the State or legal order. No other restriction based on race, nationality, religion, cultural level, sex or political convictions may impede the formation or functioning of political parties". In accordance with these regulations, the following parties, unions and other organisations, both political and non-political, of persons belonging to national minorities have been set up and are functioning: the Hungarian Democratic Union of Romania (which includes several parties and organisations), the German Democratic Forum, the Ethnic Federation of Gypsies of Romania, the Union of Gypsies (which unites several parties of different Gypsy groupings), and organisations of other minorities: Armenians, Bulgarians, Greeks, Serbs, Turks, Tatars, Czechs, Slovaks, Ukrainians, Russians and Italians.

86. The Constitution guarantees the right of all citizens, without any discrimination, to "associate freely in political parties, trade unions and other forms of association" (art. 37 (1)). The Constitution also establishes freedom of assembly: "Meetings, demonstrations, parades or any other form of assembly shall be free and may only be organized and conducted in a peaceful manner, without any weapons" (art. 36). Some provisions of Decree-Law No. 2 and Decree-Law No. 39 of January 1990 lay down a series of rules for the organisation and conduct of public assemblies with respect for democratic principles, the rights and freedoms of other citizens, the requirements of law and order and the protection of public morals.

ECONOMIC, SOCIAL AND CULTURAL RIGHTS

The right to work

87. Except for the right to protection against unemployment, all the other rights linked to the right to work had been provided for by law, this being one of the main facts adduced by the Communist regime as evidence of respect for

human rights in Romania. After December 1989, a series of prescriptive acts were first adopted to protect employment in arduous and dangerous conditions and to base wages on the appropriate criteria of the competence and effective contribution of workers to the operations of enterprises. The following are relevant:

a) Decree-Law No. 68 of 9 February 1990 eliminating certain inequities in wages;

b) Decree-Law No. 95 of 19 March 1990 fixing the working week at five days in State establishments;

c) Decree-Law No. 147 of 12 May 1990 amending and repealing legal provisions limiting freedom of employment;

d) Act No. 30 of 15 September 1990 concerning the engaging of wage-earners by reference to their competence;

e) Act No. 31 of 22 March 1991 fixing the working day at less than eight hours for workers employed in arduous, harmful or dangerous conditions.

88. The establishment of a private sector in the economy and the switch to a market economy have necessitated new legislation; consideration of this legislation began in Parliament at the end of 1990, leading to the enactment of a wide range of laws, including:

a) Act No. 2 of 8 January 1991 concerning plurality of offices;

b) Act No. 11 of 29 January 1991 concerning unfair competition;

c) Act No. 13 of 8 February 1991 concerning collective labour agreements;

d) Act No. 14 of 8 February 1991 concerning wages, supplemented by Act No.32 of the same year.

89. The following matters have been examined and regulated for the first time in Romania:

a) The social protection and vocational rehabilitation of the unemployed, by Act No. 1 of 8 January 1991;

b) The solution of labour disputes, by Act No. 15 of 11 February 1991.

90. The right to work and the social protection of labour are covered by provisions in the 1991 Constitution which are equally applicable to all inhabitants of Romania. According to article 38 of the Constitution:

"1. The right to work may not be restricted. The choice of profession and place of work shall be free.

2. Wage-earners are entitled to the social protection of labour. The measures of protection cover industrial safety and hygiene, working conditions for women and young people, the establishment of a minimum wage in keeping with the economic level, weekly rest days, paid annual holidays, work in arduous conditions, and other specific matters.

3. The normal length of the working day shall not, on average, exceed eight hours.

4. Women shall receive equal pay with men for equal work.

5. The right to collective bargaining and the obligatory nature of collective agreements are guaranteed."

The Constitution also establishes "the right to strike to defend the professional, economic and social interests of workers (art. 40). Similarly, it expressly prohibits forced labour, enumerating the situations which, according to international rules, do not constitute forced labour (art. 39). Finally, the Constitution imposes on the State the duty of "taking measures of economic development and social welfare in order to ensure a decent level of life for citizens" (art. 43 (1)).

The right to form and join trade unions

91. The former Communist-type unions were dissolved at the end of 1989. Free trade unions were set up in enterprises, sometimes two to three in a single enterprise, based on the free choice of wage-earners. They have taken an active part in the process of establishing new economic structures, wage liberalisation and negotiation, regulation of the right to strike, unemployment assistance and other social welfare measures. Trade union federations, confederations and associations have been set up in industry, but also in the health service network, in transport, construction and other industries. Free association in trade unions is guaranteed by the Constitution (art. 37 (1)).

The right to housing

92. The legislation in force gives individuals the right to build houses with State help or with their own resources; the right to rent a dwelling in State or private ownership; and the possibility of buying a dwelling from the stock of State-built housing. The demand for housing, however, has greatly exceeded the supply, particularly in recent years, because the State has substantially reduced the volume of building because of the shortage of funds. There are many cases where people do not have adequate housing or the financial means to build a home for themselves. As in other countries, the problem is a long way from solution, particularly in Bucharest and in some other large cities. The most controversial problem is that of dwellings and buildings which were nationalized, expropriated or confiscated by the authorities of the old regime. The tenants are claiming the right to buy their homes, while the former owners are contesting the State's right to sell property which it acquired illegally and are therefore demanding that the buildings should be returned to them.

The right to health and social security

93. The medical care provided by the State health services is free of charge for wage-earners, retired persons, children under fifteen, schoolchildren and students. The rules in force lay down the categories of illness for which medicines are also provided free of charge. Following the liberalisation of the prices of medicines, a system has been introduced under which 50 per cent of the price is reimbursed to persons who are statutorily entitled to free medical care.

94. The right to a pension is guaranteed to wage-earners under the State social insurance system, as it is to other categories of workers with their own pension schemes (lawyers, skilled workers). Following the dissolution of the agricultural co-operatives, new legislation is under consideration with a view to granting pensions to farmers who were members of these co-operatives.

95. The Constitution has, for the first time, provided for the right of handicapped persons to enjoy special protection in the form of medical treatment and rehabilitation, education, training and appropriate social integration (art. 46).

96. Reference should also be made to article 45 of the Constitution, which guarantees a special system of protection and assistance to secure the rights of children and young people, including assistance to parents in the form of monthly State allowances, help in caring for sick or handicapped children and social welfare arrangements for all children and young people.

The right to education and vocational training

97. Under the Constitution, the right to education and vocational training is guaranteed through compulsory general education for all the country's children, through secondary education and vocational training, and through university and post-university training. State education is free (art. 32 (1 and 4)).

98. The right of members of national minorities to learn and receive instruction in their mother tongue is guaranteed (art. 32 (3)). In Romania, there are schools, classes or groups of students receiving instruction in Hungarian, German, Serbian, Bulgarian and other languages, as will be seen from annex 5. It should be noted that there are seven teacher-training schools providing instruction in Hungarian, one in German and classes for other languages (Ukrainian, Slovak, Bulgarian, Turkish, Lipovan, and the Gypsy language.

99. Where higher education is concerned, there is a Theatrical Institute and a Medical and Pharmacological Institute in Tîrgu-Mureş in which instruction is given solely in Hungarian. The University of Cluj-Napoca has mathematics, physics and chemistry departments teaching in Hungarian; in all, there are 199 subjects which are taught in Hungarian in this university.

100. In the case of other minorities, teachers are trained at the universities of Bucharest, Timişoara, Cluj-Napoca and Iaşi. There are also schools or classes and groups of students taught in a language in international use, English or French in particular.

101. Private universities have been opened in recent years. The Constitution guarantees university independence (art. 32 (6)). More detailed legislation on pre-university and university education and on university independence are now under consideration.

102. Under the Constitution, the State "ensures freedom of religious education, according to the individual needs of each denomination". Similarly, "in public schools, religious education is organized and guaranteed by the law" (art. 32 (7)). Religious education is given in minority languages, depending on the denomination concerned. For example, instruction is given in Hungarian in the university-level Protestant Theological Institute of Cluj-Napoca, the Roman Catholic university-level Theological Institute at Alba Iulia (with faculties at

Timişoara, Oradea and Satu Mare), seven Roman Catholic theological seminaries, six Roman Catholic theological schools, six theological seminaries of the Reformed Church, one Seventh Day Adventist seminary and two Unitarian seminaries. Church ministers are trained in German at the Theological Institute of Cluj-Napoca (which has a branch at Sibiu) and in three theological seminaries. The staff of other denominations are trained at the Theological Institute of Cluj-Napoca or abroad.

The right to participate in cultural activities

103. The exercise of this right is based on "the freedom of creation of any type, whether orally, in writing, in images, in sound or by other forms of public communication, a freedom which the Constitution proclaims inviolable (art. 30 (1)), on the "individual's right of access to all information of public interest" (art. 31 (1)), on freedom of the forms of association (art. 37 (1)), which also implies association in various organisations of a cultural character. For members of national minorities, the right to take part in cultural activities on a footing of equality means the right to preserve, develop and express their ethnic, cultural, linguistic and religious identity and, under the provisions of the new Constitution (art. 6 (1)), this is recognised and guaranteed by the State. There are theatres, museums, cultural institutions, libraries, etc. operating in the minority mother tongues, as will be seen from the table in annex 6.

The right of access to any place or service intended for use by the general public

104. All Romanian citizens without discrimination and aliens residing in or visiting Romania enjoy all services intended for the public on a footing of equality. No restrictions or privileges are envisaged either in the law or in administrative regulations regarding access to transport facilities, hotels, restaurants, theatrical productions or parks.

Article 6

LEGISLATIVE MEASURES ASSURING EFFECTIVE PROTECTION AND REMEDIES AGAINST ANY ACTS OF RACIAL DISCRIMINATION

105. The Constitution, the Codes of Criminal and Civil Procedure, and the organisation and functioning of the courts guarantee equal and effective protection for every person against the violation of his individual rights and fundamental freedoms. As already stated, the constitutional provisions guarantee:

a) The equality of citizens "before the law and the public authorities, with no privileges and with no discrimination" (art. 16 (1));

b) The general duty of individuals and public servants to comply with the law and to be answerable for violation of the law in accordance with the principle that "no one is above the law" (art. 16 (2));

c) The duty of the judicial authorities to dispense justice in the name of the law, judges being independent and subject only to the law (art. 123).

106. The guarantee of an effective remedy against any racial discrimination also derives from the free and unrestricted access to justice; under the

Constitution, any person "may appeal to the organs of justice for the protection of his legitimate rights, freedoms and interests" (art. 21 (1)). In order to prevent any possible discrimination in this respect, the Constitution excludes any possibility of the free access to justice ever being restricted; according to the Constitution, "no law may curtail the exercise of this right" (art. 21 (2)).

107. Reference should also be made to the provisions of article 20 of the Constitution, under which:

> "The constitutional provisions on the rights and freedoms of citizens shall be interpreted and applied in accordance with the Universal Declaration on Human Rights and with the other covenants and treaties to which Romania is a party. In the event of inconsistencies between the covenants and treaties relating to fundamental human rights to which Romania is a party and domestic law, international instruments shall take precedence".

108. Under the constitutional and legal provisions in force, any person whose rights are infringed by an act of racial discrimination may apply to:

a) the criminal prosecution authorities, where the act constitutes an offence, with a view to the author being brought before the competent criminal court;

b) direct to the court, where, according to the law, the act involves the civil liability of the author;

c) the court, where a labour dispute caused by the illegal cancellation of a labour contract is involved;

d) the departmental court, where the case falls within the competence of the administrative disputes court. Any person may also apply to the Ombudsman and to the Advisory Council for National Minorities, a Romanian Government body.

109. Any person who is dissatisfied with a judgement on the merits (in criminal, civil and labour cases and in matters involving administrative litigation) may lodge an appeal with a higher court (departmental court, court of appeal or the Supreme Court, as appropriate). The right of interested parties to avail themselves of the legal means of contesting judicial decisions is guaranteed by the Constitution (art. 128).

110. The right of a person to seek satisfaction or just an adequate reparation for any injury caused by racial discrimination may be achieved by:

a) The imposition of a penalty on a person guilty of an act of racial discrimination uniting the elements of an offence;

b) The restoration of the injured person to his situation prior to the illegal act (for example, annulment of a decision illegally terminating a labour contract);

c) Annulment of the discriminatory administrative act or performance of the administrative act which he was refused for a discriminatory reason;

d) Payment of the compensation due for the injury suffered (the claim for compensation being settled in the course of the criminal proceedings or

through separate civil proceedings, within the framework of the labour dispute or in the administrative disputes court, as appropriate).

111. Under Act No. 29 of 7 November 1990 concerning administrative disputes, any person who considers that one of his legally recognised rights has been injured by an administrative act or by the unwarranted refusal of an administrative authority to deal with his petition concerning a legally recognised right may apply to the administrative disputes section of the departmental court with a view to the act being annulled, the right claimed being recognised or restitution made for the injury caused (art. 1). Where the claim is admitted, the court also rules on the material and psychological damages demanded (art. 11). This is the first time for 45 years that a law has provided for "psychological damages". It is important to note that, where a person does not claim damages because the scope of the injury was not known to him at the time the decision to annul the act was taken, he may claim damages later in a separate action. The prescription period for such an action runs from the date on which he knew or should have known the extent of the injury (art. 12).

112. The right to compensation for injury resulting from illegal conviction or detention is established by the Code of Criminal Procedure (art. 504-507). Act No. 32 of 16 November 1990 extended the right to compensation to persons on whom unjust preventive measures have been imposed, such as the obligation not to leave an area for a specific period of time. The right of a person wronged by a public authority to obtain recognition of the right claimed, annulment of the act and compensation for the damage has been embodied in the Constitution (art. 48 (1), which also stipulates that the State "bears vicarious liability, in accordance with the law, for damage resulting from judicial errors committed in criminal cases" (art. 48 (3)).

113. Neither before nor during the period 1990-1992 did the Romanian judicial authorities have to deal with any case of the violation of human rights on grounds of race, colour, ancestry or national or ethnic origin. With regard to the events of March 1990 in Tîrgu-Mureş, it has been asserted that those arrested and prosecuted were mainly of Hungarian or Gypsy nationality, or that those arrested and prosecuted after the clashes in the communes of Kogălniceanu and Bolintin were mainly Gypsies, implying that persons of Romanian origin received different and discriminatory treatment. As indicated above, each of these cases has been decided on the basis of the evidence. The authors of some acts of violence have not, admittedly, been identified and the investigation is still proceeding. Complaints have been received from members of national minorities against the public authorities regarding abuses or ill-treatment, but without alleging discrimination on grounds of race or nationality.

Article 7

114. The changes that have taken place in Romania since 1989 have also led to a series of measures at the governmental and non-governmental level to publicise and promote human rights and fundamental freedoms, to develop understanding, tolerance and friendship among racial or ethnic groups and among all citizens irrespective of their nationality.

115. Secondary school curricula have included human rights and fundamental freedoms in lessons on civics, based on the Universal Declaration of Human Rights and other instruments, including the Convention on the Elimination of All Forms of Racial Discrimination. During the years 1990-1992, the Romanian National Committee for UNICEF made a sustained effort to familiarize children,

and particularly schoolchildren, with the Convention on the Rights of the Child and hence with the principles of equality and non-discrimination.

116. The work of the Romanian Human Rights Institute and the European Centre for the Study of Ethnic Problems has been mainly concerned with information, documentation, research and education aimed initially at professional people (judges, prosecutors, lawyers, members of the police force, teachers, doctors, etc.) but its work is being gradually extended to increasingly wide sections of the population in the spirit of respect for human rights, mutual understanding and respect for the right to be different. For example, the European Centre for the Study of Ethnic Problems publishes a review entitled "Ethnicity", which, on the basis of developments among ethnic groups in Romania, deals mainly with questions of mutual understanding, the positive traditions of their common life, and the part played by the mass media, the human factor and mutual respect in inter-ethnic relations. Another publication by the centre, entitled "Demosthenes", deals with problems of inter-ethnic social communication. The Centre has also organized symposia on ethnicity in the modern world and the role of the media, and discussions regarding vatious ethnic groups in Romania.

117. The Romanian Government itself is promoting programmes and projects for the study of the specific problems of persons belonging to certain ethnic groups, for example, the Gypsies. Mention should be made in this connection of the Kogalniceanu project, which seeks to promote dialogue between the communities of Romanians, Macedo-Romanians and Gypsies, and to improve ethnic relations. A symposium was organized in Bucharest in April 1993 by the Romanian Ministry for Foreign Affairs in co-operation with the ethnic relations project (United States of America) and associations of Gypsies in Romania on the subject of programmes for Gypsy communities; the participants included representatives of the Gypsy associations in central and eastern Europe, as well as governmental representatives from those countries and from some western European countries. A weekly folklore television programme, entitled "Ensemble", presents Romanian folklore productions and similar productions of the national minorities living in Romania.

118. Similarly, the recently established Advisory Council for the National Minorities has the function of establishing and maintaining contacts with representatives of the legal organisations of citizens belonging to national minorities, and of making proposals for draft laws and government decisions or administrative measures for the settlement of problems within its field of competence; it also maintains permanent relations with the local public authorities in order to identify the specific problems of their area and monitoring their solution.

List of annexes */

1. Distribution of the Romanian population by ethnic origin.

2. Results of the local elections of February 1992.

3. Statistics on the position of the religious denominations in Romania.

4. Publications and radio and television broadcasts in the ethnic minority languages.

5. Instruction in the national minority languages.

6. Cultural institutions of the national minorities.

*/ These documents may be consulted, in the French version transmitted by the Romanian Government, in the archives of the Centre for Human Rights.